THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.23001 OF 2005

Dt.28.10.2005

Between:

Challa Venkateswarlu … Petitioner

And

The Collector, Prakasam District, Ongole and

2 others. … Respondents

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies.

The petitioners questions the action of the Mandal Revenue Officer, Kandukur, Prakasam District, in seizing the entire stock of paddy and rice available in the mill along with consignment of 400 bags of rice loaded in the lorry bearing No.AP27V 7179 and sealing the rice mill of the petitioner under cover of panchanama dated 22.9.2005, as illegal and arbitrary and consequently to set aside the same.

The case of the petitioner is that the seizure of the said stocks is illegal and arbitrary and contrary to the provisions of the Essential Commodities Act and also the judgment of this Court in *V.V.Subba Rao v. The Collector and District Magistrate, Prakasam District* which

was confirmed by the Division Bench in W.A. (SR) No.55989 of 2005 on 4.8.2005. The petitioner submits that he has fulfilled the levy target as fixed by the Civil Supplies Department and delivered 300 M.Ts. of rice towards levy for the year 2004-2005 and even after restriction of movement of rice is removed, the procurement is made an option of the millers and dealers and has been furnishing levy to the Government by maintaining 'B' register correctly and all the transactions are being duly accounted for in the 'B' register from June, 2005 onwards. It is stated that the petitioner has purchased 300 bags of Food For Work (FFW) rice from one Kanneti Venkata Subba Reddy, who was the highest bidder in the public auction conducted by the Mandal Revenue Officer, Kanigiri and obtained certificate along with tax invoice dated 21.9.2005. It is stated that on 22.9.2005 the petitioner has sold 400 bags of rice to New Bombay under valid bills and along with waybills transporting by engaging a lorry bearing No.AP27V 7179 and when it was about to start, the 3rd respondent along with the enforcement Deputy Tahsildar inspected the petitioner's mill and on suspicion seized the entire stocks of rice along with lorry and further sealed the mill by conducting a panchanama alleging that the petitioner is doing clandestine business in P.D.S rice and initiated proceedings under Section 6-A of the Essential Commodities Act, 1955. It is the case of the petitioner that he has purchased 300 bags of F.F.W rice in the public auction and therefore he has not violated any of the provisions of the A.P.Scheduled Commodities Dealers (Licensing and Distribution) Order 1982 or the A.P.Rice Procurement (Levy) Order, 1984.

On the other hand, the learned Government Pleader for Civil Supplies, on instructions, submits that A.P.Rice Procurement (Levy) Order, 1984 is in force and the petitioner has contravened Clause 16(1) of the said Order by not maintaining true and correct accounts and by not furnishing fortnight return.

It is stated that in the instant case, the Mandal Revenue Officer, Kandukur inspected the mill premises and found 400 bags at 50 K.Gs., each of Public Distribution System rice loaded in said lorry

bearing No.AP27V 7179 and on verification it was found that the said rice relates to Public Distribution System which are ready to transport to Vasudeva Rice Traders, Mumbai through bill Nos.9 and 10 dated 22.9.2005 with way bill No.00035152 dated 22.9.2005. Since the rice relates to Public Distribution System which are being transported unauthorisedly, the Mandal Revenue Officer seized the said 400 bags i.e., 20 MTs along with the said lorry. Apart from that, the M.R.O, Kandukur, found 504-50 Quintals of F.F.W rice also in the mill which was kept for diverting to black market. Therefore, the 3rd respondent noticed that the petitioner is doing clandestine business in relation to Public Distribution System rice as well as Food For Work rice. The stocks were seized under the cover of panchanama and the proceedings under Section 6-A of the Essential Commodities Act were initiated.

It is stated that the petitioner has submitted an application before the Collector and District Magistrate, Prakasam District, Ongole for release of the seized stocks and vehicle as an interim measure and that the 3rd respondent was directed to remove the seal to the mill and take custody of the seized stocks and transport the stocks to a safer place without any problem to the functioning of the mill. Since the petitioner was doing clandestine business with PDS as well as FFW rice, his request for release of the said stocks was not considered.

The learned counsel for the petitioner submits that the learned single Judge of this Court in W.P.No.17959 of 2004 dated 23.12.2004 in the case of *V.V.Subba Rao v. The Collector and District Magistrate, Prakasam District* (supra) held that in so far as rice relating to F.F.W, the proceedings under Section 6-A cannot be initiated and the only course open to the authorities is to initiate proceedings under the Code of Criminal Procedure and accordingly directed to release the seized stocks of paddy, rice, broken rice etc., without insisting on furnishing of any bank guarantee. It is stated that the said order was carried in appeal by the Government in W.A.SR.No.55989 of 2005 and the Division Bench of this Court while observing that A.P.Rice

Procurement (Levy) Order, 1984 is still in force and directed that the stocks seized be released in favour of the writ petitioners and the Government was given liberty to proceed against the petitioners in terms of any law in force and available to them.

Admittedly, the seized rice relates to Food For Work and the provisions of A.P.Rice Procurement (Levy) Order 1984 would not apply and therefore the question of violating the said Order does not arise. If any offence of criminal breach of trust is committed by the petitioner, criminal action is liable to be initiated. The petitioner was found transporting the rice relating to PDS and therefore the proceedings under Section 6-A of the Essential Commodities Act are applicable. Therefore, the authorities have rightly initiated the said proceedings.

In view of the aforesaid facts and circumstances of the case, I am of the opinion that the petitioner is not entitled for release of 400 bags of rice alleged to have been meant for Public Distribution System for which proceedings have been initiated under Section 6-A of the Act and the petitioner is not entitled for interim custody of the said rice. However, if the petitioner furnishes bank guarantee for half of the value of the said goods, the authorities shall release same on furnishing bank guarantee within ten days from the date of receipt of a copy of this order, or else the same may be auctioned pending enquiry under Section 6-A of the said Act. In so far as the rice of 504-50 quintals relating to Food For Work is concerned, I am of the view that the only course open for the respondents is to file criminal complaint under the relevant provisions of Indian Penal Code or any other law applicable. So far as the seizure of stock meant for Food For Work is concerned, I am of the opinion that the judgments of the Division Bench of this Court referred to above are squarely covered to the facts of this case. Accordingly, the respondents are directed to release the said stock in favour of the petitioner keeping it open to file criminal complaint under the relevant provisions of Indian Penal Code.

The writ petition is accordingly disposed of as indicated above. No costs.

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(V.ESWARAIAH, J.)

28.10.2005

Note: Issue copy within two days

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